

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TREMONT SECURITIES LAW, STATE LAW AND
INSURANCE LITIGATION : x
Master File No.
: 08 Civ. 11117 (TPG)

This Document Relates to: INSURANCE ACTION,
09 Civ. 557 (TPG), and specifically to:

YALE M. FISHMAN 1998 INSURANCE TRUST,

Plaintiff, :
: 11 Civ. 1283 (TPG)
- against - :
:

PHILADELPHIA FINANCIAL LIFE ASSURANCE
COMPANY, :
:

Defendants. :
:

YALE M. FISHMAN 1998 INSURANCE TRUST, et al., :
:

Plaintiffs, :
- against - :
:

GENERAL AMERICAN LIFE INSURANCE COMPANY, et al., : 11 Civ. 1284 (TPG)
:

Defendants. :
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**THE TREMONT AND RYE FUNDS' JOINDER
IN THE TREMONT DEFENDANTS' MOTION TO DISMISS**

Plaintiff Yale M. Fishman 1998 Insurance Trust ("Plaintiff" or "Fishman") has commenced two related litigations¹ stemming from its purchase of variable universal life insurance policies from one of two carriers, Philadelphia Financial Life Assurance Company f/k/a AGL Life Assurance Company and General American Life Insurance Company (the

¹ The two related litigations are captioned as *Yale M. Fishman 1998 Insurance Trust v. Philadelphia Financial Life Assurance Company f/k/a AGL Life Assurance Company, et al*, 11 CV 1283 (TPG) ("Fishman P") and *Yale M. Fishman 1998 Insurance Trust, et al v. General American Life Insurance Company, et al* 11 CV 1284 (TPG) ("Fishman IP") (collectively, the "Fishman Actions").

“Carriers”). At Plaintiff’s direction, these Carriers invested a portion of the insurance policies’ cash value with the Tremont Opportunity Fund III, LP (the “Opportunity Fund”), causing the Carriers, *not the Plaintiff*, to become Limited Partners in the Opportunity Fund. The Opportunity Fund, in turn, invested a certain portion of its assets with either Rye Select Broad Market Prime Fund, LP (the “Prime Fund”), Rye Select Broad Market Insurance Fund LP (the “Insurance Fund”), or Rye Select Broad Market XL Fund LP (the “XL Fund”), which, in turn, invested with Bernard L. Madoff Investment Securities LLC (“BLMIS”) either directly or through various total return swap transaction where the banking institutions themselves were the actual Madoff investors. Plaintiff has commenced the Fishman Actions against a number of individuals and entities in an effort to hold them responsible for the losses that the Opportunity Fund incurred as a result of Madoff’s fraud.

In *Fishman I*, the caption lists the Opportunity Fund, the Prime Fund, the Insurance Fund, and the XL Fund (collectively, the “Funds”) as both direct defendants and nominal defendants, whereas in *Fishman II* the caption lists the Funds as strictly nominal defendants. Irrespective of their characterization in the caption, a reading of the amended complaints in both Fishman Actions leads to the conclusion that no direct claims are being asserted against the Funds. Instead, in both cases, Plaintiff appears to be suing derivatively on behalf of the Funds.

Because no direct claims have been asserted against the Funds in either of the Fishman Actions, the Funds do not intend to respond to the amended complaints. However, if any of the claims asserted therein can be construed as being asserted against the Funds, directly, then those claims should be dismissed for substantially the same reasons as set forth in the Tremont Defendants’ Memorandum of Law (Dkt. No. 733), which the Funds hereby adopt and incorporate by reference.

CONCLUSION

For all the foregoing reasons, if the Court finds that the Funds are required to answer the First Amended Complaint, or if any claims can be construed as having been asserted against the Funds directly, then the Court should grant the Funds' motion to dismiss for the reasons articulated by the Tremont Defendant's in their Memorandum of Law (Dkt. No. 733), and award such other and further relief as is just and proper.

Dated: New York, New York
April 13, 2012

TANNENBAUM HELPERN SYRACUSE &
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